

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8

ALLWASTE TANK CLEANING, INC. A  
SUBSIDIARY OF PHILIP SERVICES CORPORATION<sup>1</sup>

Employer

and

CASE NO. 8-RC-16156

DISTRICT 2A, TRANSPORTATION TECHNICAL  
WAREHOUSE INDUSTRIAL AND SERVICE  
EMPLOYEES UNION affiliated with  
AMERICAN MARITIME OFFICERS

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: <sup>2</sup>

*All full-time and regular part-time tank cleaner employees, employed by the Employer at its 6626 State Route 795, Walbridge, Ohio facility, but excluding confidential employees, all office clericals, guards and supervisors as defined in the Act and all other employees.*

The Employer is a Georgia corporation, with a facility located 6626 State Rout 795 in Walbridge, Ohio, the only facility involved herein, where it is engaged in the cleaning of industrial tanks. There are approximately 9 employees in the unit found appropriate herein.

The Petitioner seeks a unit composed of all tank cleaner employees including those with the title of shift supervisor. The Employer contends that the shift supervisors are supervisors within the meaning of Section 2(11) of the Act and should, therefore, be excluded from the unit.

Therefore, the sole issue presented by this case is whether the shift supervisors are statutory supervisors and should be excluded from the unit as the Employer contends.

Manager Richard Goucher oversees the Employer's operations. He has held that position for eleven years. Prior to becoming a manager, Goucher was employed as a shift supervisor and assistant manager. Al Ruiz, the assistant manager, reports directly to Goucher. Ruiz was hired in May 2000, when the workload at the facility doubled. Prior to that time, only three employees were working as tank cleaners. Both Goucher and Ruiz are paid salary.

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<sup>2</sup> The unit is in accord with the stipulations of the parties.

Burgess was hired in May 2000 as a tank cleaner, and was promoted to third shift supervisor in November 2000, when the third shift was added. At that time, Burgess received a dollar an hour increase to eleven dollars an hour. Jayes was hired in late December, 2000 as the second shift supervisor. After he completed a thirty day probationary period, he received a dollar an hour increase and is currently earning eleven dollars an hour. Two other employees had occupied the position of shift supervisors during 2000. One was terminated and the other quit.

The Employer currently operates three shifts which are overlapping. The first shift is from 7:00 a.m. – 5:00 p.m.; the second shift is from 3:30 p.m. to midnight; and the third shift is from 11:30 p.m. to 8:00 a.m. The manager, assistant manager and administrative assistant all work the first shift. In addition, there are five tank cleaner employees who also work on the first shift. Four employees, including shift supervisor Jayes work on the second shift and two employees, including shift supervisor Burgess, work on the third shift. The record establishes that when a shift supervisor is absent, the other shift supervisor or the manager or assistant manager will work a double shift. All employees, with the exception of the administrative assistant, spend the majority of their time cleaning tanks.

Employees employed in the position of tank cleaners have a 90-day probationary period. It appears that their maximum rate of pay is ten dollars per hour. The record reflects that shift supervisors are subject to the same benefits and pay practices, time and attendance program, and other working conditions as those employed in the position of tank cleaners. Thus, there is little difference, if any, in the benefits and working conditions between shift supervisors and those employed as tank cleaners, except for certain job duties which are performed exclusively by the shift supervisors.

According to the current job description for shift supervisors, they are responsible for training, supervision, assignment, production, inspection and coordination of all work done during their shift. The shift supervisors, according to the job description, are to make recommendations to the manager regarding transfers, layoffs, rewards and disciplinary action on their shifts. They are to periodically inspect employees' work to ensure quality and are to enforce all safety rules and regulations. Additionally, they may authorize overtime as required.

While the evidence establishes that the job description was reviewed with Jayes when he was hired, there is no evidence that Burgess reviewed the document. The Employer asserts that Burgess was verbally informed of his duties.

The record reflects that prior to the start of each shift, the shift supervisor reviews what occurred during his shift, including the tanks currently in the bay and what tanks need to be cleaned, with the oncoming shift supervisor. Because employees handle and utilize toxic materials, safety is of paramount importance to the Employer. In this regard, it is the shift supervisor's responsibility to ensure that employees are always wearing the proper safety equipment and following appropriate established safety practices. In fact, they are responsible for conducting periodic safety audits on their shift. When spot safety audits are conducted by the manager, shift supervisors are held responsible for any safety violations discovered.

The evidence establishes that shift supervisor Jayes initiated, effectively recommended and signed a written warning issued to an employee on his shift pursuant to the progressive discipline system in effect. The employee was disciplined for carelessness and failure to follow established safety procedures when, on January 15, 2001, he failed to disconnect a steam line before moving a tank. Jayes observed the violation.

Burgess has not been involved in the discipline of any employees because no employees have been disciplined on third shift.

During the time that Burgess has worked on the third shift, the majority of his time has been spent cleaning tanks. As noted, he works with only one other employee. That employee was trained on first shift. During his tenure as shift supervisor, Burgess has not authorized overtime, and has never told the other employee when to take a break. Burgess testified that ninety percent of the time he does not assign the other employee any work because what needs to be done is self evident. However, he is involved daily in shift change meetings, and has called the manager on at least ten occasions when problems have arisen on the third shift. The record is silent as to the nature of the problems that spurred Burgess to contact the manager or the result of those calls.

On one occasion when the other employee was badly burned at work, Burgess reported the incident to the manager. When the other employee wanted to leave, Burgess told him to leave and see a doctor. Burgess remained at the facility after the employee left. However, as a result of the Employer's policy requiring that two people must be present and working when tanks are cleaned, Burgess could not perform any work.

It is clear that Burgess inspects the safety equipment worn by the other employees on a daily basis and monitors the practices followed on his shift. He has occasionally checked the work of the other employees on his shift to ensure that the tank that they are working on is clean. He is held accountable by management for the safety practices on his shift.

Section 2(11) of the Act defines "supervisor" as follows:

"any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with

the foregoing, the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.”

The Board has consistently found that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that the authority is exercised with independent judgment and not in a routine matter. **Pepsi-Cola Company**, 327 NLRB 1062 (1999); **Providence Hospital**, 320 NLRB 717 (1996); and **Bowne of Houston, Inc.**, 280 NLRB 1222, 1223 (1986). It is also well established that the burden of proving supervisory status rests on the party asserting such status. **Billows Electrical Supply of Northfield, Inc.**, 311 NLRB 878 (1993) and **The Ohio Masonic Home, Inc.**, 295 NLRB 390 (1989).

In enacting Section 2(11) of the Act, congress distinguished between true supervisors who are “vested with genuine management prerogatives” and lead persons who are protected by the Act even though they perform “minor supervisory duties.” **Providence Hospital**, *supra* at 725. In each case presenting a supervisory issue, the Board must “differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact.” *Ibid.* at 725.

It appears from the record that, although limited, the shift supervisors do exercise supervisory authority. Because of the Employer’s emphasis on safety, it appears that the disciplinary action engaged in by shift supervisor Jaynes was not a sporadic exercise of authority. Additionally, there is no evidence that the Employer independently investigated the incident prior to the warning being issued. Shift supervisors are held accountable for what happens on their respective shift, including safety practices and the quality of work. They are

held out to other employees as supervisors. I note that if they were found not to be supervisors, there would be no supervisors present during the majority of the work day.

Based upon the foregoing, and the record as a whole, I conclude that the shift supervisors are supervisors as defined in Section 2(11) of the Act and shall exclude them from the unit found appropriate herein.

The parties have stipulated, and I find, that the following individuals occupy the position set forth opposite their names and are ineligible to vote in any election as they are supervisors within the meaning of Section 2(11) of the Act

Richard Goucher       -       Manager

Al Ruiz                       -       Assistant Manger

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **District 2A, Transportation Technical Warehouse Industrial and Service Employees Union affiliated with American Maritime Officers.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969).** Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994).** The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by February 28, 2001.

Dated at Cleveland, Ohio this 14<sup>th</sup> day of February 2001.



/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

177-2484-6200